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NO. COA10-467

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

IN THE MATTER OF:

C.R.E.A.

Yancey County  
No. 06 J 49  
(03 J 59 appears on the  
face of the order from  
which appeal is taken)

Appeal by Respondent-Appellant Mother from order entered 4 January 2010 by Judge Ted McEntire in District Court, Yancey County. Heard in the Court of Appeals 7 September 2010.

*Hockaday & Hockaday, P.A., by Daniel M. Hockaday, for Yancey County Department of Social Services, Petitioner-Appellee.*

*Pamela Newell for Guardian ad Litem.*

*Joyce L. Terres for Respondent-Appellant Mother.*

McGEE, Judge.

Respondent-Mother appeals from the trial court's order terminating her parental rights as to her daughter C.R.E.A. (hereafter C.A.). Respondent-Mother contends that the evidence and the trial court's findings of fact do not support its conclusion that grounds existed to terminate her parental rights.<sup>1</sup> We affirm

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<sup>1</sup> Although the trial court's order also terminates the parental rights of putative father J.M., he is not a party to this appeal and we do not discuss him further in this opinion.

the order of the trial court.

The Yancey County Department of Social Services (DSS) received a report on 19 April 2006 alleging that C.A. was neglected. In investigating the report, DSS discovered that Respondent-Mother's home was filthy and that the interior of the home was covered with animal hair. A social worker observed C.A. attempt to eat food that was covered with animal hair. Respondent-Mother also left C.A. with inappropriate caregivers, including a person who had a history with DSS and a criminal background. Respondent-Mother stated to DSS that she would be exclusively responsible for caring for C.A. However, on 11 August 2006 DSS found C.A. in the care of a man who had been convicted of attempted murder, and DSS promptly filed a petition alleging that C.A. was neglected and dependent, and placed C.A. in nonsecure custody in a foster home. When C.A.'s foster mother attempted to give C.A. a bath, C.A. began to experience pain in her vaginal area. C.A. was taken to Spruce Pine Hospital where Dr. Kelly Rothe (Dr. Rothe) performed a Child Medical Exam (CME) on C.A. As a result of Dr. Rothe's examination, DSS discovered C.A. had suffered an acute penetrating injury to her vaginal area. Dr. Rothe concluded it was likely that C.A. had been sexually abused. DSS was unable to determine the perpetrator of C.A.'s sexual abuse, but it filed a second petition on 17 August 2006, alleging that C.A. was sexually abused.

The trial court entered an order on 18 December 2006, in which it adjudicated C.A. neglected. The trial court ordered Respondent-Mother to follow the recommendations from her psychological

evaluation, attend individual therapy to address her personality disorder and other mental health issues, participate in dialectical behavioral therapy, participate in C.A.'s therapy, participate in family team meetings, cooperate with law enforcement's investigation into C.A.'s sexual abuse, attend visitation pursuant to the plan established by DSS, cooperate with Child Support Enforcement in providing financial support for C.A., continue in safe housing and stable employment, and assist the trial court and DSS in identifying C.A.'s father.

Respondent-Mother initially demonstrated progress toward these goals in 2006 and 2007. In the orders entered following several 2007 review hearings, the trial court found that Respondent-Mother attended individual and family therapy and case management services, signed a consent form to allow DSS to monitor her progress in therapy, obtained a psychological evaluation, attended unsupervised visitation, and remained employed.

DSS received a report on 27 November 2007, alleging inappropriate discipline of C.A. by C.A.'s foster parents. In the course of DSS's investigation into that allegation, however, C.A. stated that Respondent-Mother "stuck sharp things in her bottom," and social workers observed bruising in that area. C.A. also began to have behavioral problems after unsupervised visitation with Respondent-Mother. DSS discovered no misconduct on the part of the foster parents, but determined that C.A.'s injuries matched descriptions of repeated spankings administered by Respondent-Mother. As a result, DSS modified Respondent-Mother's visitations

from unsupervised to supervised.

C.A. became physically ill in March 2008, after a visitation at which Respondent-Mother provided food for C.A. Dr. Rothe conducted another CME, and C.A. tested positive for the drug digoxin. C.A. was hospitalized as a result of the poisoning. The trial court held a review hearing on 28 March 2008 and ordered that Respondent-Mother's visitation be suspended pending the result of testing done on the food provided to C.A. by Respondent-Mother.

The trial court conducted another review hearing on 26 June 2008. At that time, Respondent-Mother had withdrawn from counseling and was no longer attending any individual therapy. Respondent-Mother had also had no contact with DSS since the March 2008 incident in which C.A. became ill, and had not attended any team meetings since that time. C.A.'s behavior improved markedly after Respondent-Mother's visitation was suspended. The trial court modified Respondent-Mother's permanent plan to adoption, and made guardianship with a non-relative the concurrent plan.

DSS filed a motion to terminate Respondent-Mother's parental rights, as well as the parental rights of any putative father, as to C.A., on 17 September 2008. As to Respondent-Mother, the motion alleged two grounds for termination: (1) that C.A. was a neglected juvenile within the meaning of N.C. Gen. Stat. § 7B-1111(a)(1) and N.C. Gen. Stat. § 7B-101(15); and (2) that Respondent-Mother had willfully left C.A. in foster care for a period of more than twelve months without making reasonable progress toward correcting the conditions that had led to C.A.'s removal from Respondent-Mother's

care. N.C. Gen. Stat. § 7B-1111(a)(2). Though Respondent-Mother was granted an extension of time in which to file responsive pleadings, she filed no pleadings with the trial court in response to the motion to terminate her parental rights.

After several continuances due to the failure of Respondent-Mother to appear, a termination hearing was held on 2 and 3 December 2009. Respondent-Mother attended the 2 December 2009 hearing, but did not attend the 3 December 2009 hearing. Social workers testified that Respondent-Mother failed to complete her individual therapy because she ceased attending sessions in March 2008. Respondent-Mother also failed to complete family therapy with C.A., and failed to attend team meetings after March 2008. Respondent-Mother never presented any documentation to DSS to demonstrate that she had completed therapy. Despite contacting Respondent-Mother's purported employer, DSS was unable to confirm that Respondent-Mother was working after the summer of 2008. Respondent-Mother's contact with DSS became extremely sporadic after January 2009. During that same time period, C.A. thrived in foster care.

The trial court entered an order on 4 January 2010, concluding that the evidence supported both grounds for termination of Respondent-Mother's parental rights as alleged by DSS, and also that it was in C.A.'s best interests to terminate Respondent-Mother's parental rights. Respondent-Mother appeals.

On appeal, Respondent-Mother argues that the evidence does not support some of the trial court's findings of fact or its

conclusion that grounds existed to terminate her parental rights. We disagree.

In the adjudicatory stage, the burden is on the petitioner to prove that at least one ground for termination exists by clear, cogent, and convincing evidence. N.C. Gen. Stat. § 7B-1109(f) (2010); *In re Blackburn*, 142 N.C. App. 607, 610, 543 S.E.2d 906, 908 (2001). Review in the appellate courts is limited to determining whether clear and convincing evidence exists to support the findings of fact, and whether the findings of fact support the conclusions of law. *In re Huff*, 140 N.C. App. 288, 291, 536 S.E.2d 838, 840 (2000).

"'[F]indings of fact made by the trial court . . . are conclusive on appeal if there is evidence to support them.'" *In re H.S.F.*, 182 N.C. App. 739, 742, 645 S.E.2d 383, 384 (2007) (quoting *Hunt v. Hunt*, 85 N.C. App. 484, 488, 355 S.E.2d 519, 521 (1987)). Unchallenged findings of fact are binding on this Court on appeal. *In re S.D.J.*, 192 N.C. App. 478, 486, 665 S.E.2d 818, 824 (2008) (citing *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991) ("'[w]here no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal'")).

We note that although the trial court concluded that grounds existed pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) and (2) to terminate Respondent-Mother's parental rights, we find it dispositive that the evidence is sufficient to support termination of Respondent-Mother's parental rights pursuant to N.C. Gen. Stat.

§ 7B-1111(a)(2). See *In re Pierce*, 67 N.C. App. 257, 261, 312 S.E.2d 900, 903 (1984) (a finding of one statutory ground is sufficient to support the termination of parental rights).

In order to terminate a parent's parental rights pursuant to N.C. Gen. Stat. 7B-1111(a)(2), the trial court must conclude

that a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and, further, that as of the time of the hearing . . . the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

*In re O.C. & O.B.*, 171 N.C. App. 457, 464-65, 615 S.E.2d 391, 396 (2005).

"Willfulness" according to this section is less than willful abandonment, and does not require a finding of fault. *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 398 (1996).

"Willfulness may be found where[,] even though a parent has made some attempt to regain custody of the child, the parent has failed to show" sufficient progress in response to the efforts of DSS. *In re Clark*, 159 N.C. App. 75, 84, 582 S.E.2d 657, 662 (2003).

In this case, there is no question that C.A. had been in foster care for more than twelve months at the time DSS filed the motion to terminate Respondent-Mother's parental rights in September of 2008. Further, the evidence, as stated above, demonstrates that although Respondent-Mother initially made some progress in her case plan, she willfully failed to make reasonable progress toward correcting the conditions that led to C.A.'s removal from her care. The trial court found, and the evidence

demonstrates, that Respondent-Mother stopped participating in family therapy in late 2007, and stopped attending individual therapy in March 2008. Respondent-Mother never re-engaged in therapy, though she was "in need of continued counseling based upon the recommendations of her psychological evaluation[.]" In addition, Respondent-Mother also ceased case management services, and DSS was unable to verify her employment. Respondent-Mother moved out of state, "a substantial distance from [C.A.'s] present placement[.]" and the trial court had no information regarding the appropriateness of Respondent-Mother's current residence. Respondent-Mother remarried, but her new husband did not contact DSS in order to become involved in reunification efforts. The trial court further found

that the cessation of visitations previously ordered by the [c]ourt did not prohibit [Respondent-Mother] from participating in the child and family team meetings, case management services or her individual therapy; that Yancey DSS has no further information as to [Respondent-Mother's] employment status; that once visitations were stopped between [Respondent-Mother] and [C.A.] in March, 2008, [Respondent-Mother] has made little, if any, progress in completing the requirements of her case plan and at this time is making no progress to comply with her DSS case plan or court ordered requirements[.]

Thus, in spite of Respondent-Mother's initial cooperation, she ultimately ceased working with DSS or other professionals and ceased all progress toward completing the requirements of her case plan.

We hold that the trial court's findings of fact are supported by clear and convincing evidence, including the testimony of the



social workers. Further, that the findings support the trial court's conclusion that Respondent-Mother willfully failed to make reasonable progress toward correcting the conditions that led to C.A.'s removal from the home. Accordingly, we affirm the trial court's order terminating Respondent-Mother's parental rights.

Affirmed.

Judges BRYANT and GEER concur.

Reported per Rule 30(e).